

BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JAMES RUTHERFORD BLACK, JR.
1315 Military Drive
P. O. Box 307
Hamilton, Al 35570

Certificate No. C-24939

Respondent.

No. D-3008

OAH No. N-21075

CORRECTION TO DECISION

The Decision in this case, dated December 5, 1983, with an effective date of November 3, 1983, contains a typographical error on page 3 at the top of the page.

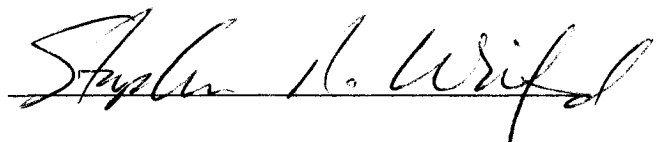
"Section 2304" is amended to read "Section 2305," which is the section covering disciplinary action by another state as a basis for a cause of action in California. There is currently no Section 2304 in the Business and Professions Code.

This correction is made nunc pro tunc to December 5, 1983.

DATED: November 8, 1983

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE

By:



BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JAMES RUTHERFORD BLACK, JR.
1315 Military Drive
P.O. Box 307
Hamilton, Al 35570
Certificate No. C-24939

NO. D-3008

OAH NO. N-21075

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Medical
Quality Assurance as its Decision in the
above-entitled matter.

This Decision shall become effective on December 5, 1983.

IT IS SO ORDERED November 3, 1983.



MILLER MEDEARIS
Secretary-Treasurer

BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
JAMES RUTHERFORD BLACK, M.D.)	NO. D-3008
1315 Military Drive)	
P.O. Box 307)	OAH NO. N-21075
Hamilton, Al 35570)	
Certificate No. C-24939)	
)	
Respondent.)	
)	

PROPOSED DECISION

The matter was heard before Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, on August 8, 1983, in Sacramento, California.

Daniel J. Weston, Deputy Attorney General, represented the complainant.

There was no appearance by or on behalf of the respondent, James Rutherford Black, M.D.

Evidence was received, the hearing was closed and the matter was submitted.

The Administrative Law Judge certifies this decision and recommends its adoption.

FINDINGS OF FACT

I

Robert Rowland, Executive Director of the Board of Medical Quality Assurance of the State of California (the Board) filed the accusation against James Rutherford Black, M.D., re-

spondent. Rowland acted in his official capacity.

II

On March 19, 1963, the Board issued physician and surgeon certificate number C-24939 to respondent, authorizing him to practice medicine and surgery in California. That certificate is now, and has been at all times relevant to this matter, in full force and effect. Respondent has not been previously disciplined by the Board.

III

On December 17, 1981, the Alabama State Board of Medical Examiners issued its report to the Medical Licensure Commission of the State of Alabama, requesting that said Commission revoke the license of respondent.

On February 24, 1982, the Medical Licensure Commission of Alabama issued its order accepting the application of respondent for voluntary restrictions on respondent's practice and pursuant thereto imposed conditions of probation.

On August 18, 1982, the Medical Licensure Commission of Alabama issued its order revoking the license of respondent for violating the terms and conditions of probation previously imposed.

The discipline in Alabama was based upon respondent's gross malpractice or repeated malpractice or gross negligence in performing unnecessary diagnostic tests or medical or surgical services on patients in Alabama in 1981, resulting in the death of one patient and the endangerment of two patients.

IV

On August 3, 1978, the State Board of Medical Education and Licensure of the Commonwealth of Pennsylvania issued its order suspending respondent's license with such suspension stayed with terms and conditions of probation being imposed.

The Pennsylvania discipline was based upon events which occurred in Minnesota and which caused the State of Minnesota to revoke respondent's license to practice medicine there on May 18, 1977.

DETERMINATION OF ISSUES


Clear and convincing evidence to a reasonable certainty established that respondent subjected his certificate

to discipline pursuant to Section 2304 of the Business and Professions Code.

ORDER

Certificate number C-24939 issued to respondent James Rutherford Black, M.D., is revoked.

Dated: August 30, 1983



LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings

OFFICE COPY
ATTORNEY GENERAL

REDACTED

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of the State of California
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4 Telephone: (916) 445-7877

5 Attorneys for Complainant
6
7

8 BEFORE THE
DIVISION OF MEDICAL QUALITY
9 BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA
11

12 In the Matter of the Accusation) No. D-3008
Against:)
13)
JAMES RUTHERFORD BLACK, M.D.) ACCUSATION
14 1315 Military Drive)
P. O. Box 307)
15 Hamilton, AL 35570)
Certificate No. C-24939)
16)
Respondent.)
17)

18 COMES NOW THE COMPLAINANT, ROBERT ROWLAND, and as
19 causes for disciplinary action against the above-named Respond-
20 ent, alleges as follows:

21 I

22 Complainant, Robert Rowland, is the Executive Director
23 of the Board of Medical Quality Assurance of the State of
24 California (hereinafter referred to as the "Board") and makes
25 this Accusation solely in such official capacity.

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II

Respondent, James Rutherford Black, M.D., on or about March 19, 1963, was issued Physician's and Surgeon's Certificate No. C-24939 by the Board to practice medicine and surgery in the State of California.

Respondent's official address of record is as is set forth in the caption.

III

Section 2305 of the Business and Professions Code provides that the suspension or revocation or other discipline by another state of a license or certificate to practice medicine issued by that state to a person also holding a certificate under the Medical Practice Act shall constitute grounds for disciplinary action for unprofessional conduct against such licensee in this state.

IV

(re Alabama)

Respondent is subject to disciplinary action pursuant to section 2305 as follows:

On or about December 17, 1981, the Alabama State Board of Medical Examiners issued its report to the Medical Licensure Commission of the State of Alabama, requesting that said Commission revoke the license of respondent.

On or about February 24, 1982, the Medical Licensure Commission of Alabama issued its order accepting the application of respondent for voluntary restrictions on respondent's practice and pursuant thereto imposed conditions of probation.

1 On August 18, 1982, the Medical Licensure Commission
2 of Alabama issued its order revoking the license of respondent
3 for violating the terms and conditions of probation previously
4 imposed.

V

(re Alabama)

7 The report of the Alabama State Board of Medical
8 Examiners of December 17, 1981, made findings and charges upon
9 the basis of testimony taken which include the following:

10 "That the said James Rutherford Black, II,
11 M.D. has, since April, 1981, and continuing up to
12 the present day, been engaged in the practice of
13 medicine in such a manner as to endanger the
14 health of his patients.

15 "That the said James Rutherford Black, II,
16 M.D. is guilty of gross malpractice or repeated
17 malpractice or gross negligence in the practice
18 of medicine.

19 "That the said James Rutherford Black, II,
20 M.D. has performed unnecessary diagnostic tests
21 or medical or surgical services with respect to
22 the treatment of his patients.

23 "That the said James Rutherford Black, II,
24 M.D. is now unable to practice medicine with
25 reasonable skill and safety to his patients by
26 reason of physical or mental illness, the exact
27 nature of which is unknown to the State Board of

1 Medical Examiners, but which illness constitutes
2 a clear and present danger to the safety and
3 welfare of his patients.

4 ". . . that [respondent's] failure to pro-
5 vide adequate care, resulted in the death of a 32
6 year old female patient.

7 ". . . that [respondent] endangered the
8 health and safety of one R [REDACTED] H [REDACTED] 18 year
9 old female, #29562, by the performance of unnec-
10 essary diagnostic tests or medical or surgical
11 services, and by reason of gross malpractice and
12 gross negligence in the provision of medical
13 treatment.

14 ". . . that [respondent] endangered the
15 health and safety of one Brenda Burleson, 32
16 year old female, #29664, by reason of the per-
17 formance of unnecessary diagnostic tests or
18 medical or surgical services, and gross mal-
19 practice and gross negligence in the provision
20 of medical treatment."

21 VI

22 (re Alabama)

23 The order of the Medical Licensure Commission of
24 Alabama imposed restrictions on respondent's practice as fol-
25 lows:

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1 "That Dr. Black satisfactorily complete at
2 least 90 days of an approved mini-residency at a
3 teaching hospital/institution approved by the
4 Commission in a program of primary care (i.e.
5 OB/Gyn, Pediatrics, Internal Medicine, or Family
6 Practice) with this program to be complete prior
7 to undertaking any other medical practice and/or
8 employment.

9 "Following Dr. Black's fulfillment of the
10 requirements contained in paragraph one (1), he
11 agrees to work in a State or Federal institution
12 approved by the Commission and hereby specifically
13 agrees that he will perform neither gynecological
14 surgery, nor intrapartum obstetrics. The terms
15 'gynecological surgery' and 'intrapartum obste-
16 trics', specifically refer to and include the
17 performance of Caesarian sections and/or normal
18 deliveries, but this restriction shall not pre-
19 clude Dr. Black from affording prenatal care or
20 his observation of gynecological surgery and
21 operative obstetrics performed by a fully licensed
22 physician(s).

23 "Dr. Black hereby agrees to complete fifty
24 (50) hours of Category I Continuing Medical
25 Education per year.

26 "Dr. Black hereby agrees to appear before the
27 Commission semi-annually.

1 "Dr. Black hereby agrees to authorize his
2 supervisors in the course of any employment under-
3 taken pursuant to paragraph two (2) above, to
4 submit semi-annual reports regarding the progress
5 of his work and any information pertinent to the
6 performance of his duties."

7 VII

8 (re Alabama)

9 The order of the Medical Licensure Commission of
10 Alabama of August 18, 1982, and after a hearing, revoked
11 respondent's license in that respondent violated,

12 ". . . the ORDER entered into with the Commission
13 on February 24, 1982, by undertaking to treat or
14 cause to be treated under his supervision and
15 direction B█████ C█████ and/or V█████ H█████
16 when in fact Dr. Black was prohibited from under-
17 taking any private medical practice or medical
18 employment until he had satisfactorily completed
19 the terms of his probationary ORDER."

20 VIII

21 (re Pennsylvania)

22 Respondent is further subject to disciplinary action
23 pursuant to section 2305 as follows:

24 On or about August 3, 1978, the State Board of Medical
25 Education and Licensure of the Commonwealth of Pennsylvania
26 issued its order suspending respondent's license with such

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1 suspension stayed with terms and conditions of probation being
2 imposed.

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IX

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(re Pennsylvania)

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The order of the State Board of Medical Education and
Licensure of the Commonwealth of Pennsylvania found the follow-
ing:

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"1. The Respondent, James Rutherford Black,
M.D., is the holder of a Pennsylvania License to
Practice Medicine, No. MD-26038, issued August 29,
1958. (Commw. Exh. 1).

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"2. The Citation and Notice of Hearing were
received by the Respondent more than 10 days prior
to the hearing. (N.T. 4).

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"3. Pennsylvania is the original state of
the Respondent's medical license and his
Pennsylvania license is the basis upon which reci-
procity was given in Minnesota. (N.T. 30-31).

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"4. The Respondent was licensed to practice
medicine in the State of Minnesota and was
involved in the general practice of medicine and
in the practice of obstetrics and gynecology there
during the period from August 1975 through July of
1976. (N.T. 4, 18, 22).

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"5. The Respondent is presently practicing
medicine in Nebraska. (N.T. 16-18).

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1 "6. The Respondent is a specialist in obste-
2 trics and gynecology. (N.T. 16, 39).

3 "7. The Respondent's license to practice
4 medicine was revoked in Minnesota on May 18, 1977
5 pursuant to a stipulation agreement entered into
6 by the Respondent and the Minnesota State Board of
7 Medical Examiners. (N.T. 8, 13, Commw. Ex. 2).

8 "8. During the period from August of 1975
9 through July of 1976, the Respondent was on 24-
10 hour call in Bertha, Minnesota and suffered from
11 fatigue and acute blepharospasm which was emo-
12 tional in origin. (N.T. 19-20, 34-35).

13 "9. In the treatment of his blepharospasm,
14 the Respondent took Meproamate, a tranquilizer,
15 for at least three years. (N.T. 21, 33).

16 "10. During the period from August 1975
17 through July of 1976:

18 "(a) The Respondent was stuporous and
19 incoherent and fell asleep when attempting or
20 preparing to perform a surgical procedure
21 while he was suffering from influenza.
22 (N.T. 25-26);

23 "(b) The Respondent while taking
24 Meproamate for his blepharospasm bumped into
25 walls. (N.T. 26);

26 "(c) During the performance of an appen-
27 dectomy on a 10 year-old female child, the

1 Respondent had difficulty finding the appen-
2 dix and indicated during the operation that
3 the fallopian tube might be an appendix.
4 (N.T. 26-27); and

5 "(d) The Respondent pursuant to a medi-
6 cal examination which was ordered by the
7 Minnesota State Board of Medical Examiners
8 was diagnosed as suffering from a mental
9 condition and possible drug dependency.
10 (N.T. 29).

11 "11. The Respondent discontinued the use of
12 Meprobamate in October of 1976 after he consulted
13 an ophthamologist at the Mayo Clinic. The discon-
14 tinuance of the Meprobamate caused him to have a
15 grand mal convulsion. (N.T. 22-23). The
16 Respondent was subsequently admitted to the alco-
17 holic and/or drug addiction ward at the Mayo
18 Clinic for one month. (N.T. 24).

19 "12. The Respondent has not used Meprobamate
20 since his admittance to the Mayo Clinic. (N.T. 25).

21 "13. The Respondent was examined by
22 R [REDACTED] A. M [REDACTED], M.D., a specialist in psychiatry
23 in 1970 and on April 13, 1978. (N.T. 41, 43).
24 Dr. M [REDACTED] is licensed to practice medicine in
25 Pennsylvania and has two offices, one in
26 Pittsburgh, Pennsylvania and one in Harmony,
27 Pennsylvania. (N.T. 41).

"14. In the examination by Dr. M [REDACTED] of the Respondent on April 13, 1978, there was no indication of any use of drugs or alcohol by the Respondent. (N.T. 47, 50-51).

"15. The Respondent is not a personality type to use drugs. (N.T. 51).

"16. There is no psychological impairment that would interfere with the Respondent's ability to practice his speciality [sic] at the present time, providing that the Respondent is limited to the practice of his specialty. (N.T. 45, 53-54)."

" . . . [respondent] is presently practicing
in Nebraska. . . ."

X

(in Pennsylvania)

16 The order of the State Board of Medical Education and
17 Licensure of the Commonwealth of Pennsylvania imposed probation
18 as follows:

" . . . the license of [respondent] is hereby suspended, the suspension is stayed and the Respondent is placed on probation for two years from the date of this order. During the probation period the respondent is required to limit his practice to his specialty of obstetrics and gynecology and is required to submit to the State Board of Medical Education and Licensure an annual report by a competent psychiatrist of his choice

1 which shall contain an evaluation of whether the
2 Respondent is physically [sic] and mentally able
3 to practice medicine with reasonable skill and
4 safety to patients."

5 * * * * *

6 WHEREFORE, Complainant prays that the Division of
7 Medical Quality hold a hearing on the matters alleged herein and
8 following a hearing issue a decision:

9 (1) Revoking or suspending the certificate of
10 Respondent; and

11 (2) Taking such other and further action as is deemed
12 necessary and proper.

13 DATED: This 24th day of January , 1983.

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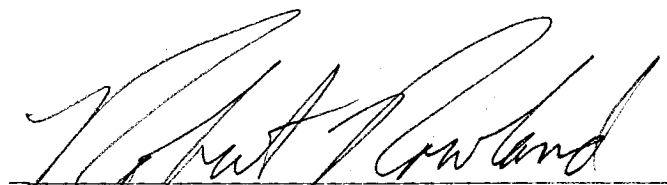
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ROBERT ROWLAND
Executive Director
Board of Medical Quality Assurance

Complainant